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1 LAW CLERK: All rise.

2 THE COURT: Please be seated.

3 We have a pretrial conference in Versata
4 against SAP. It's Case 2:07-CV-153.

5 What says the plaintiff?

6 MR. COLE: The plaintiff is ready, Your
7 Honor.

8 THE COURT: For the defendant?

9 MR. MELSHEIMER: May it please the Court,
10 we're ready, Your Honor.

11 THE COURT: All right. We've got jury
12 selection set for the 29th. You are going to have
13 30 minutes a side for voir dire. You can take up to
14 five minutes of that for the purpose of making an
15 opening statement-style presentation on what you think
16 the evidence is going to show and to introduce the folks
17 at your table and your client representatives.

18 Avoid argument during that time and stick
19 to -- use the -- or use the rest of your time for
20 gathering information.

21 We'll do opening statements on the 9th.
22 We'll start at 8:30. You're going to get 30 minutes a
23 side for opening statements.

24 We're going to take up motions in limine
25 today. An order in limine is not a definitive ruling on

1 the admissibility of the evidence. It's an order that
2 you approach the bench before you launch into something
3 that's covered by an order in limine.

4 Y'all have both heard the speil on
5 testifying experts.

6 My inclination is, to the extent I can, I'm
7 going to rule on your motions to exclude on the papers
8 that are submitted. If I need to hear arguments on
9 anything, I'll hear them at 3:00 o'clock on the 6th, the
10 afternoon before we start.

11 With that, the first motion in limine I've
12 got that is contested is the plaintiff's 17; is that
13 correct?

14 MR. BAXTER: Your Honor, excuse me. I don't
15 mean to interrupt, but --

16 THE COURT: Yes?

17 MR. BAXTER: -- before we get too far down
18 that road, do you know when we might get the jury list
19 and the questionnaires?

20 THE COURT: I think it will be ready
21 Tuesday, Tuesday afternoon.

22 MR. BAXTER: Thank you, Your Honor.

23 THE COURT: 17 is the first one that is
24 contested, as I understand it; is that right?

25 MR. KNEUPPER: Yes, Your Honor.

1 THE COURT: All right. That's denied.

2 No. 18 is granted in part and denied in
3 part. It's granted, as I understand it, SAP is going to
4 avoid referencing alcohol consumption; is that
5 correct --

6 MR. MELSHEIMER: Yes, Your Honor.

7 THE COURT: -- on No. 18? All right.

8 MR. MELSHEIMER: Yes, sir.

9 THE COURT: It's granted to that extent.
10 It's denied otherwise.

11 19 is denied.

12 20 is denied.

13 21 is granted.

14 22 is denied.

15 23 is denied.

16 24 is denied.

17 25, I'm inclined to allow in evidence that's
18 related to the consulting organization, not -- and
19 otherwise grant the motion in limine with respect to 25.

20 26, I believe, is granted by agreement.

21 27, supplemental motions in limine are
22 granted.

23 28 is granted.

24 29 is granted.

25 30 is granted.

1 31 will be carried. I'll take -- take that
2 up with respect to the exclusion motion related to
3 Mercer and Wagner.

4 32 is granted.

5 33 is granted.

6 34 is granted.

7 35 will be carried. I will address that
8 when I take up the motion to strike the rebuttal expert
9 report.

10 36 is granted.

11 37 is carried, and I'll take that up when I
12 take up the motion to strike the reports of Becker and
13 Wagner.

14 38 is denied.

15 That concludes Versata's motions.

16 MR. MELSHEIMER: Your Honor, can I just ask
17 a question or is --

18 THE COURT: Yes.

19 MR. MELSHEIMER: -- is it better to wait?

20 THE COURT: If you have to -- if it's
21 related to the motions in limine, you can ask it.

22 MR. MELSHEIMER: May it please the Court.

23 Your Honor, I didn't understand the Court's
24 ruling with respect to No. 25 on the -- the Howard
25 Thompson e-mail. The Court said it was granted in part

1 and denied in part, and I just didn't understand the
2 Court's --

3 THE COURT: Well, I'm going to take a look
4 at the e-mail. There's a portion of it that relates to
5 Versata as being nothing -- or Trilogy, rather, as being
6 nothing more than a consulting organization; is that
7 correct?

8 MR. MELSHEIMER: I have the e-mail here,
9 yes, Your Honor.

10 THE COURT: Okay. And I was inclined to
11 allow that evidence in and otherwise order that you
12 redact the balance of it that was requested. I think
13 that was the alternative that you had proposed; is that
14 correct?

15 MR. MELSHEIMER: Yes, Your Honor, I guess
16 what we'll do is there -- there may be some dispute
17 about the -- what is being redacted, but I'll consult
18 with the other side.

19 THE COURT: Well, try to work it out.

20 MR. MELSHEIMER: Yes, sir.

21 THE COURT: If you can't -- can't work it
22 out, I'll rule on it --

23 MR. MELSHEIMER: Thank you.

24 THE COURT: -- okay?

25 All right. With respect to SAP's motions,

1 it's my understanding that 5, 11, 15, 16, 17, 18, 19,
2 20, 21, and 22 are agreed.

3 Is that correct, Mr. Cole?

4 MR. COLE: I believe that's right. We may
5 have a couple of additional agreements.

6 THE COURT: All right. Those are granted.

7 No. 1 will be carried, and I'll give you a
8 written ruling on the motion to -- SAP's Motion to
9 Exclude.

10 No. 2 is also carried.

11 3 is granted in part and denied in part.
12 It's denied with respect to any evidence focused on
13 copying.

14 No. 4 is also carried. I'll take that up
15 with the motion to exclude.

16 6 was withdrawn.

17 7 is denied.

18 8 is denied.

19 9 is denied. It's my understanding with
20 respect to 9 that you're limiting those theories,
21 Mr. Cole, to arguments related to the design-around; is
22 that correct?

23 MR. POLLINGER: That's correct, Your Honor.

24 THE COURT: All right. That's how it needs
25 to be characterized, then, all right?

1 MR. POLLINGER: Okay. Thank you, Your
2 Honor.

3 THE COURT: No. 10 is denied -- excuse me,
4 was withdrawn.

5 12 is denied.

6 13 and 14 were agreed.

7 23 is denied.

8 Any question about the rulings on the
9 motions in limine from the plaintiff?

10 MR. COLE: No, Your Honor.

11 THE COURT: Any additional from the
12 defendant?

13 MR. MELSHEIMER: No, Your Honor.

14 THE COURT: All right. Other than motions
15 to exclude, what else do we need to do as far as
16 pretrial is concerned today?

17 MR. COLE: The parties have exhibit
18 objections, but they believe they can narrow those to
19 almost nothing, if not nothing.

20 THE COURT: Well, give me an update when we
21 pick the jury, and if there's a need to work even beyond
22 5:00 o'clock on the 6th, then I'll -- we'll take them up
23 then before we roll out on Monday.

24 MR. COLE: Thank you, Your Honor.

25 THE COURT: Yes, sir?

1 MR. BAXTER: Your Honor, is the Court going
2 to give an instruction to the jury prior to voir dire,
3 given sort of the unusual nature of the situation we're
4 in now, about what the case is about, that it's no
5 longer sort of -- I mean, it may be an infringement case
6 at least in part, but certainly it's no longer a
7 validity case, that there's been infringement over --
8 over the main claims or --

9 THE COURT: Well, I was inclined to instruct
10 them what they were going to decide as opposed to what
11 they didn't have to decide. They're going to decide
12 damages and to -- maybe to a limited extent questions of
13 infringement, but beyond that, they're not going to be
14 called upon to decide any other issues related to the
15 patent.

16 MR. MELSHEIMER: Might --

17 MR. BAXTER: Excuse me, Mr. Melsheimer.

18 MR. MELSHEIMER: Sorry.

19 MR. BAXTER: The question is whether or not
20 we'll be allowed to tell the jury there has been at
21 least in the past a finding of infringement with regard
22 to this defendant and these -- these patents?

23 THE COURT: Well, I mean, it's previously
24 been determined that the --

25 MR. BAXTER: Yes.

1 THE COURT: -- that at least some of the
2 products have been found to infringe the patent.

3 MR. BAXTER: Yes, sir.

4 THE COURT: You can tell them that.

5 MR. BAXTER: Okay. And that the patent is
6 valid?

7 THE COURT: Yes.

8 MR. BAXTER: Thank you, Your Honor.

9 MR. MELSHEIMER: Your Honor, might we -- I
10 don't want to burden the Court with more paper. Might
11 we submit a proposed preliminary instruction along those
12 lines?

13 THE COURT: That will be fine.

14 MR. MELSHEIMER: All right. Thank you, Your
15 Honor.

16 THE COURT: You can submit -- submit it by
17 Thursday of this week.

18 MR. MELSHEIMER: Thank you, Your Honor.

19 THE COURT: Close of business Thursday.

20 MR. MELSHEIMER: Thank you, Your Honor.

21 THE COURT: All right. Right now, y'all are
22 going to be the first jury selected. So we will start
23 at 9:00 o'clock.

24 We're going to pick down here. I'm going to
25 seat an eight-person jury. You'll get four strikes a

1 side, but be forewarned that it's going to be difficult
2 to select the jury in here. You're -- you're going to
3 be facing some over here, some back there, and some over
4 there, so keep the folks that are involved in jury
5 selection to a minimum --

6 MR. MELSHEIMER: Okay.

7 THE COURT: -- because there won't be a
8 whole lot of extra seating in the courtroom.

9 MR. MELSHEIMER: Thank you, Your Honor.

10 THE COURT: Anything else other than motion
11 to exclude that we can deal with from the defendant's
12 side?

13 MR. MELSHEIMER: Your Honor, I had this
14 whole presentation of the Daubert motions, but I'm
15 just -- I'm just -- you're just not interested in
16 hearing it today. So I guess we're just --

17 THE COURT: Well --

18 MR. MELSHEIMER: Your Honor, we have nothing
19 else, I don't think.

20 THE COURT: All right. We'll see y'all on
21 Friday.

22 MR. POLLINGER: Thank you, Your Honor.

23 MR. COLE: Thank you, Your Honor.

24 LAW CLERK: All rise.

25 (Hearing concluded.)

1 CERTIFICATION

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3 I HEREBY CERTIFY that the foregoing is a
4 true and correct transcript from the stenographic notes
5 of the proceedings in the above-entitled matter to the
6 best of my ability.

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SHELLY HOLMES	Date
Deputy Official Reporter	
State of Texas No.: 7804	
Expiration Date: 12/31/12	

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